

STATE OF MICHIGAN
SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

MASALMANI IHAB,

Defendant-Appellant.

Supreme Court
No. 154773

Court of Appeals
No. 325662

Circuit Court
No. 09-5244-FC

**PEOPLE'S ANSWER TO DEFENDANT'S APPLICATION
FOR LEAVE TO APPEAL**

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STATEMENT OF JURISDICTION

The People accept Defendant's Statement of Jurisdiction in his Brief on Appeal as complete and accurate.

ISSUES PRESENTED

ISSUE ONE

DID THE TRIAL COURT PROPERLY WEIGH THE FACTORS ENUNCIATED IN *MILLER V. ALABAMA* AND MCL § 769.25 IN DETERMINING THAT THE DEFENDANT IS THE RARE JUVENILE OFFENDER WHOSE CRIME REFLECTS IRREPARABLE CORRUPTION AND, THUS, DID NOT ERR IN SENTENCING THE DEFENDANT TO A TERM OF LIFE IMPRISONMENT WITHOUT PAROLE FOR HIS CONVICTION FOR FIRST-DEGREE FELONY MURDER?

PLAINTIFF-APPELLEE'S ANSWER: "YES"

DEFENDANT-APPELLANT'S ANSWER: "NO"

ISSUE II

DID THE TRIAL COURT DID COMMIT PLAIN ERROR IN SENTENCING THE DEFENDANT TO A TERM OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE ON HIS FIRST-DEGREE FELONY MURDER CONVICTION WITHOUT EMPANELING A JURY?

PLAINTIFF-APPELLEE'S ANSWER: "NO"

DEFENDANT-APPELLANT'S ANSWER: "YES"

COUNTERSTATEMENT OF FACTS

I. Quizno's—Eastpointe

In August of 2009, 21-year-old Matthew Landry ("Landry") resided with his parents in Chesterfield Township. (Tr. 9-24-10, 47). Landry worked at Dolly Pizza. (Tr. 9-24-10, 48). His girlfriend, Francesca Bommarito ("Bommarito"), lived in Roseville. (Tr. 9-24-10, 48). Landry drove a 2000 green four-door Honda Accord. (Tr. 9-24-10, 54-55).

On Saturday, August 8, 2009, Matthew was delivering pizzas. (Tr. 9-24-10, 55-56). At 7:00 p.m., Matthew called his mother, Doreen Landry ("Doreen"), and told her that he was having a problem with his car alarm. (Tr. 9-24-10, 55-56). Landry asked his mother if he could use her vehicle to finish his deliveries. (Tr. 9-24-10, 55-56). With Doreen's permission, Landry came home in the green Honda and returned to work in her vehicle. (Tr. 9-24-10, 56).

Landry returned home at 12:00 midnight. (Tr. 9-24-10, 56). Doreen was up reading and Landry informed her that he was going to try and fix the car alarm. (Tr. 9-24-10, 56). At 3:00 a.m., Doreen, unable to sleep, heard Matthew leave the house in his green Honda. (Tr. 9-24-10, 57-58). The car alarm was "going off all the way down the street." (Tr. 9-24-10, 57-58). The noise woke up Landry's father, who received a text from Landry: "Yeah, sorry, dad." (Tr. 9-24-10, 57-58). Landry telephoned

Doreen the next day at 1:00 p.m. (Tr. 9-24-10, 58-60). He had spent the night with Bommarito in Roseville. (Tr. 9-24-10, 58-59).

On Sunday, August 9, 2009, Michael Sawyer ("Sawyer") and Jessica McKinney ("McKinney") were working at a Quizno's on 10 Mile Road and Gratiot Avenue in Eastpointe. (Tr. 9-23-10, 112-113, 174). At 2:00 p.m., as they waited on customers, Ihab Masalmani ("Masalmani") came into the restaurant to ask for a cup of water. (Tr. 9-23-10, 120-122, 124, 174-175, 183-188). McKinney gave him a cup and Masalmani filled it with water in the beverage area. (Tr. 9-23-10, 120-122, 124, 185-188). Earlier, Sawyer had observed Masalmani "[a]cross the street in the parking lot riding bikes" with a young African-American male named Robert Taylor ("Taylor"). (Tr. 9-23-10, 125-128).

After collecting the cup of water, Masalmani exited the restaurant. (Tr. 9-23-10, 128-129). He was inside Quizno's for only minutes. (Tr. 9-23-10, 187). Subsequently, Taylor entered Quizno's and asked McKinney for some water. (Tr. 9-23-10, 132-133, 189). McKinney showed him how to access the water in the beverage area. (Tr. 9-23-10, 133, 189-190). Taylor exited the restaurant. (Tr. 9-23-10, 134, 191). Taylor was inside Quizno's for only minutes. (Tr. 9-23-10, 191).

A short time after Taylor left Quizno's, Landry entered. (Tr. 9-23-10, 144). McKinney knew Landry from high school and was acquainted with some of Landry's friends. (Tr. 9-23-10, 191). McKinney spoke with

Landry and she made him two sandwiches. (Tr. 9-23-10, 192). After paying for his sandwiches, Landry exited Quizno's. (Tr. 9-23-10, 192).

At 2:30 p.m., Carol Santangelo ("Santangelo") was working at Uptown Clips at the strip mall directly across Gratiot from Quizno's. (Tr. 9-23-10, 215-217). At that time, she viewed "three boys pushing each other" in the Quizno's parking lot. (Tr. 9-23-10, 217). The altercation occurred near a green Toyota. (Tr. 9-23-10, 218-219). Two of the male individuals were in front of the other male individual and pushing him. (Tr. 9-23-10, 220). Santangelo remarked to a co-worker: "[I]t looks like there is a fight starting." (Tr. 9-23-10, 220). Several minutes later, she looked across Gratiot and saw "all kinds of cop cars." (Tr. 9-23-10, 221).

At this same time, Lawrence Wata ("Wata"), accompanied by his wife and his daughter, was driving his GMC Suburban eastbound on Ten Mile towards Gratiot. (Tr. 9-24-10, 243). He was heading "to Detroit to pick up somebody from the bus terminal." (Tr. 9-24-10, 244). Traffic slowed down as Wata approached Quizno's at Ten Mile and Gratiot. (Tr. 9-24-10, 245-246). Viewing the Quizno's parking lot, Wata viewed Taylor "pushing something down under his shirt." (Tr. 9-24-10, 247-248; Tr. 9-28-10, 13-14). Further, he saw Masalmani and Landry "looking in the back of [the] trunk" of Landry's green Honda. (Tr. 9-24-10, 248-249; Tr. 9-28-10, 12-13, 25-26). Masalmani had "his right arm over the top . . . of [Landry's] neck line." (Tr. 9-24-10, 249-250). The trunk was open. (Tr.

9-28-10, 29). Wata felt he was witnessing “[a] robbery.” (Tr. 9-24-10, 250). Masalmani wore an orange baseball hat. (Tr. 9-28-10, 10-11).

Wata looked at Taylor, who pulled out a cellular telephone. (Tr. 9-24-10, 251). Wata told his wife: “My god, lock the doors. I think that man has a gun.” (Tr. 9-24-10, 252). Wata pulled off near Quizno’s and “was going to open that door and holler . . . [that] there is a robbery going on.” (Tr. 9-24-10, 253). He exited his vehicle. (Tr. 9-24-10, 254). Wata did not get inside Quizno’s before Taylor “looked around the corner” and appeared to see him. (Tr. 9-24-10, 256). Wata returned to his car and drove to a spot where he could see the Quizno’s parking lot. (Tr. 9-24-10, 257-258; Tr. 9-28-10, 5-9).

Wata’s wife telephoned 9-1-1. (Tr. 9-28-10, 11). Wata viewed Taylor “looking around to the left and right, and periodically looking back at” Landry’s green Honda. (Tr. 9-28-10, 12). Taylor stood about 10 feet away from the green Honda. (Tr. 9-28-10, 26). Masalmani stood with “his left arm draped over the top of the [driver’s side] door” and his right hand on top of the vehicle. (Tr. 9-28-10, 29, 31. Landry was “sitting with his feet hanging out . . . and leaning forward.” (Tr. 9-28-10, 30). At one point, Masalmani “reache[d] around real quickly . . . and grab[bed] [Landry] by the back of his neck and drag[ged] him to the back of the car.” (Tr. 9-28-10, 32). Masalmani had Landry in a headlock with his left arm. (Tr. 9-28-10, 33). Masalmani opened the trunk with a key in his right hand and endeavored to shove Landry into the trunk. (Tr. 9-28-10,

33). For about 90 seconds, Masalmani unsuccessfully attempted to push Landry into the trunk. (Tr. 9-28-10, 34-35). Taylor continued to “look[] around, from left to right.” (Tr. 9-28-10, 34). Wata relayed his observations to the 9-1-1 operator. (Tr. 9-28-10, 33-36, 40, 47-48).

Eventually, Masalmani dragged Landry back to the driver’s side door and shoved him into the vehicle. (Tr. 9-28-10, 37). Landry gestured to Masalmani, putting his palms out and extending his arms. (Tr. 9-28-10, 38). Masalmani “hit[] him in the face.” (Tr. 9-28-10, 38). Landry flew back into the vehicle. (Tr. 9-28-10, 39). Masalmani said something to Taylor. (Tr. 9-28-10, 39-40). Taylor walked over to the green Honda and climbed in the backseat. (Tr. 9-28-10, 40). Masalmani got in the driver’s seat and drove onto Ten Mile. (Tr. 9-28-10, 40-42). After a few moments, Wata pulled onto Ten Mile and followed the green Honda through Eastpointe. (Tr. 9-28-10, 42-47). An EPD patrol vehicle in the area mistakenly pulled over Wata’s vehicle. (Tr. 9-28-10, 49-51).

Later that afternoon, Essa Rahime (“Rahime”) was working at his family-owned Sunoco gas station at 15201 East Seven Mile Road near Hayes in Detroit. (Tr. 9-24-10, 99-100). The gas station has an ATM inside the convenience store, as well as security cameras both inside and outside the store. (Tr. 9-24-10, 100-101). Masalmani entered the convenience store. (Tr. 9-24-10, 102-103). Rahime knew Masalmani as “Ihab Gills.” (Tr. 9-24-10, 102). Rahime saw Masalmani in the

convenience store on a weekly basis. (Tr. 9-24-10, 103). Masalmani purchased a white t-shirt from Rahime. (Tr. 9-24-10, 105).

Masalmani walked over to the ATM and changed his shirt, throwing the shirt he had been wearing into a garbage can. (Tr. 9-24-10, 105-106). Rahime watched Masalmani use the ATM. (Tr. 9-24-10, 106). Rahime had never seen Masalmani pay for anything other than with cash. (Tr. 9-24-10, 106). Masalmani was at the ATM “around ten minutes” and “kept looking back and looking if anybody was looking at him.” (Tr. 9-24-10, 107).

Later that afternoon, 62-year-old Eddie Collins (“Collins”), who resided on Coram in Detroit between Hayes and Brach, saw Landry’s green Honda parked in front of his home. (Tr. 9-28-10, 151-155). Collins observed Masalmani, along with an African-American male, “standing behind the car going into the trunk, looking at something in there.” (Tr. 9-28-10, 155-160). Collins watched for “a couple of minutes.” (Tr. 9-28-10, 160). When he returned 30 minutes later, the vehicle was gone. (Tr. 9-28-10, 160).

The Landry family had planned a barbeque for that afternoon. (Tr. 9-24-10, 60). Landry had told his mother that he would be at the house for the barbeque after he left Bommarito in Roseville. (Tr. 9-24-10, 60). Landry did not come to the barbeque. (Tr. 9-24-10, 60). Soon thereafter, the Landrys received a telephone call from one of Landry’s friends, Chris Emerick (“Emerick”), asking: “Have you seen Matt?” (Tr. 9-24-10, 60).

The Landrys replied: “[H]e’s with [his girlfriend].” (Tr. 9-24-10, 60). Emerick responded that Landry was not with Bommarito because she was “looking for him.” (Tr. 9-24-10, 60-61).

Doreen, at 9:30 p.m., logged onto her computer to “look at [Landry’s] debit card activity.” (Tr. 9-24-10, 61). She was a co-signer on his account at the local credit union. (Tr. 9-24-10, 62). Doreen found “three withdrawals from an address on Seven Mile Road, all three for \$102.” (Tr. 9-24-10, 63). Doreen, who worked in the banking industry, noted that “three \$100 withdrawals right in a row . . . [was] a very common pattern with credit card and debit card fraud.” (Tr. 9-24-10, 63). The transactions were made at 15201 East Seven Mile Road within a minute of one another just before 3:30 p.m. on Sunday, August 9, 2009. (Tr. 9-24-10, 65-66). Doreen telephoned Emerick and told him what she had discovered. (Tr. 9-24-10, 67-68). Emerick told Doreen that he would go look for Landry. (Tr. 9-24-10, 68). The Landrys began to make telephone calls looking for their son. (Tr. 9-24-10, 69-70).

In August of 2009, Frederick Singleton (“Singleton”) was a crack cocaine addict frequented the “State Fair Gratiot region [of Detroit], Maddelein, Monarch.” (Tr. 9-29-10, 201). On Sunday, August 9, 2009, Singleton was aware of Masalmani, who had reputation in this neighborhood. (Tr. 9-29-10, 209-210). Singleton knew Taylor, whose family lived on Maddelein. (Tr. 9-29-10, 210). Singleton earned money by bringing customers to drug dealers. (T. 9-29-10, 207).

That day, Singleton was “on the corner of Maddelein and Monarch” near a vacant drug house at 14703 Maddelein. (Tr. 9-29-10, 213-214). At 9:00 p.m., Singleton encountered Masalmani as Singleton emerged from the drug house. (Tr. 9-29-10, 215). Masalmani sat in the back seat of a small green vehicle. (Tr. 9-29-10, 216). Taylor was driving the vehicle. (Tr. 9-29-10, 216). Landry was in the back seat with Masalmani. (Tr. 9-29-10, 216). Masalmani asked: “Did anybody have anything there?” (Tr. 9-29-10, 217-218). Singleton, speaking through the car window, replied: “No, but I can get something.” (Tr. 9-29-10, 217-218). Singleton stated that it would take five minutes. (Tr. 9-29-10, 219).

At this point, the four men entered the house. (Tr. 9-29-10, 220). Two women were inside. (Tr. 9-29-10, 220). Masalmani gave Singleton \$100 and Singleton left the house on his bicycle to obtain the drugs from a place about a block away. (Tr. 9-29-10, 220). He returned in minutes. (Tr. 9-29-10, 221). Masalmani, Singleton, and the two females smoked the crack cocaine. (Tr. 9-29-10, 221-222). Landry sat on a living room couch with Taylor. (Tr. 9-29-10, 224). Landry’s dress was “unusual” for the area. (Tr. 9-29-10, 226). Singleton asked Masalmani if Landry “got high.” (Tr. 9-29-10, 228). Masalmani responded: “He doesn’t get high, don’t worry about him.” (Tr. 9-29-10, 228). Masalmani referred to Landry as his “home boy.” (Tr. 9-29-10, 228).

Masalmani purchased more crack cocaine. (Tr. 9-29-10, 226, 229). When Singleton returned to the house, “Junior” and “Chris” had arrived

at the house. (Tr. 9-29-10, 229). One of these individuals handed Masalmani a “gas can.” (Tr. 9-29-10, 230). Singleton remained in the house to smoke some of the crack cocaine. (Tr. 9-29-10, 231). Masalmani, as he smoked more crack cocaine, began to “tweak,” becoming “paranoid” and “amped up.” (Tr. 9-29-10, 231). At 10:00 p.m., Singleton left the house, leaving Masalmani, Taylor, Landry, and the two women there. (Tr. 9-29-10, 232).

II. Flagstar Bank—Harrison Township

On Monday, August 10, 2009, Jessica Reeber (“Reeber”) was working as a senior financial service representative at Flagstar Bank at 16 Mile Road and Crocker in Harrison Township. (Tr. 9-21-10, 96-98, 188-189). That morning, Kristen Sarti (“Sarti”), the assistant manager, also was working at the bank. (Tr. 9-21-10, 97-98, 189-190).

At 12:25 p.m., Reeber was seated at her desk. (Tr. 9-21-10, 97, 105). Walter Stepanenko (“Stepanenko”) entered the bank. (Tr. 9-21-10, 105, 165-166). Moments later, Sarah Maynard (“Maynard”) came into the bank and approached Reeber to deposit her payroll check. (Tr. 9-21-10, 105-106, 144). At that time, Masalmani walked up behind Maynard “and drew a gun to the back of her head.” (Tr. 9-21-10, 106-108, 147, 169-169). Masalmani, feet away from Reeber, held the gun in his left hand. (Tr. 9-21-10, 106-107). Maynard felt the gun against the back of her head, as well as right hand pushing her into the counter. (Tr. 9-21-10, 147, 168-169). Maynard sustained a bruise on her shoulder where

Masalmani had grabbed her. (Tr. 9-21-10, 152-154). The gun was black and appeared to be a semi-automatic. (Tr. 9-21-10, 107). Prior to entering the bank, Sarah observed Masalmani staring at her from across the street in trees adjacent to a McDonald's. (Tr. 9-21-10, 145-147).

Masalmani, wearing sunglasses, said to Reeber: "Give me \$50,000.00 or I'll kill her." (Tr. 9-21-10, 109, 129, 147-148, 168, 190-193). After panicking for a moment, Reeber walked towards the vault, about ten feet away. (Tr. 9-21-10, 109). Reeber viewed Masalmani walk to Sarti, who was dealing with Stepanenko. (Tr. 9-21-10, 109, 148-149, 167-168, 190). Soon, Reeber lost sight of Masalmani. (Tr. 9-21-10, 109).

As Masalmani made his threats to Reeber, Sarti, about 15 feet away, went down underneath her desk and "hit the [bank's] alarm button." (Tr. 9-21-10, 193-194). Observing these developments from a few feet away, Stepanenko, at Sarti's urging, got down to the floor and moved into a corner of the bank. (Tr. 9-21-10, 169, 194). As he walked over towards Sarti and Stepanenko, Masalmani pointed the gun at Stepanenko and said: "You're not celling!" (Tr. 9-21-10, 169-172). Stepanenko interpreted "celling" to mean "texting." (Tr. 9-21-10, 170). Stepanenko thought Masalmani's gun was either "a nine millimeter automatic or semiautomatic." (Tr. 9-21-10, 170-171). Masalmani pointed the gun at Sarti and stated: "[Y]ou better not be on your phone." (Tr. 9-21-10, 195). Masalmani grabbed Stepanenko's wallet from the nearby desk. (Tr. 9-21-10, 172, 195-196). Without thinking, Stepanenko

began to rise. (Tr. 9-21-10, 172). Masalmani pointed the gun at Stepanenko to stop him. (Tr. 9-21-10, 172-173). He took \$80.00 from the wallet. (Tr. 9-21-10, 173-174).

Masalmani returned to Maynard, again pointing the gun at her. (Tr. 9-21-10, 149). Masalmani searched her purse but did not take anything. (Tr. 9-21-10, 149-150). Reeber reached the vault but she did not have the ability to gain access to it. (Tr. 9-21-10, 110-111). At this point, Masalmani returned to Reeber's desk and began yelling for her. (Tr. 9-21-10, 111). Reeber returned to this area and informed Masalmani that she could not open the vault. (Tr. 9-21-10, 111-112). Masalmani was "get[ting] angrier and more aggressive with Maynard and towards the people in the office, moving the gun around, aiming at [Reeber]." (Tr. 9-21-10, 112). Reeber offered Masalmani the cash in her teller drawer. (Tr. 9-21-10, 112, 117).

Reeber took the box of cash from her bottom drawer and "slid it across the counter to [Masalmani]." (Tr. 9-21-10, 117, 148, 150-151, 197). Masalmani said: "I know you have more." (Tr. 9-21-10, 118). Reeber opened her top drawer and began to give Masalmani the loose cash inside it. (Tr. 9-21-10, 118-119). Masalmani stopped her and grabbed all the cash out of the top drawer himself. (Tr. 9-21-10, 119, 148, 150-151). This money included "bait bills." (Tr. 9-21-10, 135-136). Masalmani had his gun pointed at Reeber. (Tr. 9-21-10, 119-120, 150).

Masalmani turned and ran toward the front door, yelling that “he better not be locked in.” (Tr. 9-21-10, 120, 151-152, 174-175). As he left, Masalmani unsuccessfully attempted to take Maynard with him. (Tr. 9-21-10, 120). He said to her: “[C]ome with me or I’m going to kill you.” (Tr. 9-21-10, 151, 197). Maynard refused, however, and dropped to the ground. (Tr. 9-21-10, 121, 151, 174, 197). Masalmani left through the front door. Reeber hit the silent arm and ran to the front doors and locked them. (Tr. 9-21-10, 121-122, 197). Sarti telephoned 9-1-1. (Tr. 9-21-10, 198). Deputies from the Macomb County Sheriff’s Office (“MCSO”) arrived at the bank within minutes. (Tr. 9-21-10, 123).

Reeber, Maynard, Sarti, and Stepanenko spoke with MCSO Sergeants David Kennedy (“Sergeant Kennedy”) and David Willis (“Sergeant Willis”), the co-officers in charge of the Flagstar Bank investigation. (Tr. 9-21-10, 134, 158, 176, 204, 218-219). MCSO evidence technicians took fingerprint lifts from inside the bank, which were subsequently determined to belong to Masalmani. (Tr. 9-21-10, 220). That day, the MCSO obtained a security video from the Flagstar Bank surveillance cameras that depicted the armed robbery. (Tr. 9-21-10, 123-133, 154-158, 176-179, 199-204, 220). Sarti determined that Masalmani took \$6,085.32. (Tr. 9-21-10, 204-206).

At 12:30 p.m., Stephanie Stewart (“Stewart”), driving her vehicle, left her house on Beamer Street in Harrison Township to travel to the Wildflower Café, where she worked as a waitress. (Tr. 9-22-10, 8-11).

Stewart's house is located about 250 feet from the Flagstar Bank, located at 16 Mile and Crocker near Acacia. (Tr. 9-22-10, 8-9, 22-23).

Stewart drove down Acacia and approached Crocker, preparing to turn left onto Crocker. (Tr. 9-22-10, 11-13). As she drove, she viewed "a vehicle parked in an area that it really shouldn't because it was almost blocking somebody's driveway." (Tr. 9-22-10, 13-15, 20). Stewart knew that the vehicle did not belong to the occupants of that house. (Tr. 9-22-10, 14). The vehicle was a green "98 or '99 box style Honda with lightly tinted back windows, four door, and it was four screen." (Tr. 9-22-10, 16). The vehicle was parked adjacent to a culvert for drainage and a ditch. (Tr. 9-22-10, 15).

Stopped at the stop sign, Stewart observed Masalmani, about fifteen feet away, "running around the corner." (Tr. 9-22-10, 16-17, 21-22, 24). As he ran, his hands were "[h]olding his pants up." (Tr. 9-22-10, 19). Masalmani "fell in the ditch, and he dropped a whole bunch of stuff." (Tr. 9-22-10, 17-19). When he emerged from the ditch seconds later, Masalmani appeared to have "stuff shoved underneath his shirt." (Tr. 9-22-10, 17-21). She viewed "a small b[l]ack object" that was "hanging out of underneath his shirt." (Tr. 9-22-10, 17, 25). Masalmani "jumped in the car and sped off." (Tr. 9-22-10, 17, 21). Subsequently, Stewart learned that Flagstar Bank had been robbed that morning and she contacted law enforcement. (Tr. 9-22-10, 22, 24). Later, Stewart identified Masalmani from a photo lineup. (Tr. 9-22-10, 24).

Later that day, the MSCO released the security video to the media in an attempt to identify the assailant. (Tr. 9-21-10, 220-224). Almost immediately, the MSCO began to receive phone calls identifying the Flagstar Bank robber as Masalmani. (Tr. 9-21-10, 224-225).

Also during the day of Monday, August 10, 2009, the Landrys contacted the Chesterfield Township Police Department ("CTPD") and reported their son missing. (Tr. 9-24-10, 72-73). They described Landry's vehicle to a CTPD officer. (Tr. 9-24-10, 73). Doreen contacted Landry's cellular telephone service provider and was able to "see all his phone calls." (Tr. 9-24-10, 74). Bommarito came over to the Landrys' house. (Tr. 9-24-10, 76). She was "panicked" and "scared." (Tr. 9-24-10, 76). They began to make flyers to post regarding Landry's disappearance. (Tr. 9-24-10, 77).

On the evening of Monday, August 10, 2009, four employees, including Brittany Terrell ("Terrell"), were working at Jimmy Jazz at the Eastland Mall at Eight Mile Road and Kelly. (Tr. 9-22-10, 34-36). Jimmy Jazz sells urban apparel and footwear. (Tr. 9-22-10, 34). Terrell viewed a newscast regarding the bank robbery from the television inside the store and telephoned Stacey Edwards ("Edwards"), the district manager for Jimmy Jazz in Michigan. (Tr. 9-22-10, 34-35). Edwards told Terrell that she also had watched the newscast. (Tr. 9-22-10, 37-38). Terrell said: "Do you recognize anything?" (Tr. 9-22-10, 37). Edwards replied: "Were those gentlemen in our store? They looked really familiar to me, too." (Tr.

9-22-10, 37). Terrell stated: "That is exactly what I was calling you for."
(Tr. 9-22-10, 37).

The following morning, Tuesday, August 11, 2009, Edwards contacted the Harper Woods Police Department ("HWPd") and offered them the security videos from the store surveillance cameras. (Tr. 9-22-10, 36-38). Masalmani was "all over the store" in the early evening of Sunday, August 9, 2009, and "bought clothing." (Tr. 9-22-10, 38-41, 53). Among other things, Masalmani purchased a Rocowear t-shirt that read "DOA" with a hand grenade for the "O." (Tr. 9-22-10, 45, 47). They spent \$571.29 dollars in cash. (Tr. 9-22-10, 41, 49-51). Edwards called it a large purchase. (Tr. 9-22-10, 51). He was in the store "[p]robably ten to 15 minutes, maybe a little longer." (Tr. 9-22-10, 44). Edwards delivered the videos to the Roseville Police Department ("RPD") within "a couple days." (Tr. 9-22-10, 46-47).

That same morning, Doreen and Bommarito drove to the Chesterfield Township police station and spoke to Detective Scott Blackwell ("Detective Blackwell"), apprising him of everything they had learned in the past 36 hours. (Tr. 9-24-10, 79-80; Tr. 9-28-10, 95, 101-102). Detective Blackwell promised to obtain any surveillance video from any security cameras trained upon the ATM in the gas station's convenience store where these \$102 withdrawals were made. (Tr. 9-24-10, 80-81). They visited the Roseville police station later that day. (Tr. 9-

24-10, 81). An RPD officer sent them to the Detroit Police Department (“DPD”). (Tr. 9-24-10, 82-84).

III. Walmart/Marshall’s—Roseville

At 2:30 p.m., on Tuesday, August 11, 2009, Maggie Gladue was working as a shift supervisor and a cashier at a CVS Pharmacy (“CVS”) located in the Roseville Town Center at 12 Mile Road and Gratiot Avenue in Roseville. (Tr. 9-22-10, 88-89). Masalmani entered the CVS just after 2:30 p.m. and bought a back pack. (Tr. 9-22-10, 88-92).

That afternoon, David Hassroune (“Hassroune”) drove his 2002 red Honda Civic to the shopping mall at 12 Mile and Gratiot in Roseville. (Tr. 9-22-10, 55). David shopped at Marshall’s and Walmart. (Tr. 9-22-10, 56-57). At Walmart, he purchased a can of freon for his vehicle’s air conditioner. (Tr. 9-22-10, 59). Hassroune returned to his vehicle, popped the hood, and started the engine. (Tr. 9-22-10, 59). Hassroune sat in his vehicle with the driver’s side door open and began to open the container. (Tr. 9-22-10, 59-62). He popped the top of the container. (Tr. 9-22-10, 62). As he turned to exit the vehicle, Hassroune saw “a gun in [his] face.” (Tr. 9-22-10, 63).

The gun was metal, made of a “kind of steel.” (Tr. 9-22-10, 64). It was about a foot away from David’s head. (Tr. 9-22-10, 65). Hassroune “freaked for a second.” (Tr. 9-22-10, 64). The male individual point the gun at him “told [David] to get out of the car and start running.” (Tr. 9-22-10, 64-65). The male individual wore a gray jacket with the sleeves

pulled up. (Tr. 9-22-10, 65-66). The male individual had tattoos all over his hands. (Tr. 9-22-10, 66). He appeared to be wearing “sunglasses and a wig.” (Tr. 9-22-10, 66-67). Hassroune “[g]ot out and started to run.” (Tr. 9-22-10, 65).

Hassroune zigzagged through the parking lot with the can of Freon in his hand and ran into Marshall’s. (Tr. 9-22-10, 67-68). At first, nobody inside Marshall’s believed Hassroune’s claims that he had been assaulted in the parking lot. (Tr. 9-22-10, 68). Eventually, a female customer gave Hassroune her cellular telephone and he called 9-1-1. (Tr. 9-22-10, 68). After making this call, Hassroune saw that his vehicle was still sitting in the parking lot. (Tr. 9-22-10, 69). He walked back to his vehicle and shut it off. (Tr. 9-22-10, 69). Hassroune returned to Marshall’s and waited for the police. (Tr. 9-22-10, 70).

Within minutes, RPD Officer Edward Kleinedler (“Officer Kleinedler”) arrived at Marshall’s on the “carjacking” dispatch. (Tr. 9-22-10, 70, 95-97, 126-127). Hassroune recounted the assault and gave a description of the assailant, informing Officer Kleinedler that “he might have been a light skinned black guy.” (Tr. 9-22-10, 70-71, 97-98). Hassroune told the RPD officers about his assailant’s tattooed hands. (Tr. 9-22-10, 70-71). Officer Kleinedler “put [this information] out on the radio for the other units to hear.” (Tr. 9-22-10, 98).

Later, at the jury trial, Hassroune, after being shown a photograph of Masalmani’s hands, testified that those were the hands of his

assailant. (Tr. 9-22-10, 71). Masalmani had “Bad” tattooed on his left hand and “Guy” tattooed on his left hand. (Tr. 9-22-10, 71). He had the number “5” tattooed on each knuckle on both hands. (Tr. 9-22-10, 71). During his trial testimony, Hassroune identified Masalmani’s jacket as the jacket worn by his assailant. (Tr. 9-22-10, 79-81).

In the parking lot, Officer Kleinleder spoke to two other witnesses. (Tr. 9-22-10, 98-100). These two female witnesses told Officer Kleinleder that the assailant was “a fair skinned male, Arabic descent” and that “it appeared that he was wearing a wig during the incident.” (Tr. 9-22-10, 100). They informed him that “he had tattoos on his lower forearms and hands.” (Tr. 9-22-10, 100). The assailant wore black and white Air Jordan Nike shoes, dark pants, and “a gray fleece, flannel type jacket rolled up halfway up his elbows.” (Tr. 9-22-10, 100-101). Officer Kleinleder ascertained that David’s vehicle remained in the parking lot and that the assailant “did not actually get away in the vehicle.” (Tr. 9-22-10, 98-99). Armed with this information, Officer Kleinleder put out a second dispatch. (Tr. 9-22-10, 100).

At this point, Officer Kleinleder heard a radio broadcast from RPD Officer Andrew Berger (“Officer Berger”) indicating that he had “located the subject near Gratiot.” (Tr. 9-22-10, 101). Officer Kleinleder asked Hassroune and the other witness to remain stay at Marshall’s, jumped into his patrol vehicle, and began to assist in pursuit of this suspect. (Tr. 9-22-10, 101).

Also on patrol in the area only one-half mile away, Officer Berger had responded to the “call of [a] carjacking.” (Tr. 9-22-10, 133-134). Helping to set up a perimeter around the Roseville Town Center, Officer Berger began “eyeballing the area for the suspect.” (Tr. 9-22-10, 135). Soon, Officer Berger viewed Masalmani “walking from the direction of the CVS toward the bus stop” on Gratiot. (Tr. 9-22-10, 138-140). Officer Berger pulled his patrol vehicle in front of the bus stop. (Tr. 9-22-10, 138-140).

Officer Berger exited his patrol vehicle and approached Masalmani. (Tr. 9-22-10, 140). About 20 to 25 feet away, Masalmani’s “eyes widened” and he looked “shock[ed].” (Tr. 9-22-10, 140-141). Officer Berger drew his weapon and “ordered [Masalmani] straight to the ground.” (Tr. 9-22-10, 141). Masalmani “turned and ran.” (Tr. 9-22-10, 142). As he started to flee, Masalmani “discarded a large black wig.” Tr. 9-22-10, 142). Masalmani ran behind CVS and into the alley behind the Roseville Town Center. (Tr. 9-22-10, 143).

Chasing after Masalmani about 50 feet behind while putting this development over the police radio, Officer Berger observed him reach his left arm into his waistband. (Tr. 9-22-10, 143, 147-148). As Masalmani cornered himself at a loading dock behind Walmart, Officer Berger viewed him throw “a black object” with his left hand. (Tr. 9-22-10, 145-146). By this time, other RPD officers had joined Officer Berger’s

pursuit. (Tr. 9-22-10, 146). Officer Berger and the other RPD officers yelled at Masalmani: "Get on the ground!" (Tr. 9-22-10, 148-149).

Officer Kleinleder, listening to his police radio, heard that Officer Berger was chasing the suspect on foot in the alley behind the Roseville Town Center. (Tr. 9-22-10, 103). Turning down the alley, Officer Kleinleder viewed Officer Berger and a few other RPD officers endeavoring to apprehend Masalmani by a loading dock on a pile of metal crates. (Tr. 9-22-10, 103-106, 129, 148-151). Masalmani was resisting the efforts of the RPD officers to place him under arrest. (Tr. 9-22-10, 104, 128-129, 149-151). Officer Kleinleder helped the other RPD officers handcuff Masalmani. (Tr. 9-22-10, 104, 151).

Officer Kleinleder pulled Masalmani up off some metal grating and walked Masalmani over to his patrol car. (Tr. 9-22-10, 104). Masalmani wore a back pack. (Tr. 9-22-10, 106). Officer Kleinleder patted Masalmani down and recovered a "large sum of cash, sun glasses, a watch, [and] other miscellaneous items from his pockets." (Tr. 9-22-10, 105-109). He found a Rocowear "gray nylon type hoodie jacket" inside the back pack. (Tr. 9-22-10, 105-109). The back pack had a CVS tag for \$19.99. (Tr. 9-22-10, 106-107).

Officer Kleinleder transported Masalmani to the Roseville police station. (Tr. 9-22-10, 111-112). At the police station, Masalmani asked "to be seen by [the] fire department" for "[m]edical purposes." (Tr. 9-22-10, 112). Subsequently, in the booking room, Masalmani identified

himself as “Ehab Gills.” (Tr. 9-22-10, 113). During the booking process, RPD officers took photographs of Masalmani’s tattooed hands. (Tr. 9-22-10, 116-117).

After Masalmani left the area with Officer Kleinleder, Officer Berger looked “underneath . . . a trash compactor coming out of the wall of Walmart” and discovered “a magazine with ammunition for it for a handgun.” (Tr. 9-22-10, 152, 158). The bullets were .40 Smith and Wesson and “hollowed out.” (Tr. 9-22-10, 154). In the same area, he viewed a cellular telephone. (Tr. 9-22-10, 153).

RPD Officer David Lukasavage (“Officer Lukasavage”), on patrol in Roseville that afternoon, heard the dispatch regarding a carjacking at the Roseville Town Center. (Tr. 9-22-10, 161-162). With I-94 a potential escape route, Officer Lukasavage “jumped on westbound 94 to try to locate the suspect vehicle.” (Tr. 9-22-10, 162). As soon he learned that Masalmani was fleeing on foot back at 12 Mile and Gratiot, Officer Lukasavage returned to that area. (Tr. 9-22-10, 163). When he arrived there, “the search was on for [Masalmani’s] weapon.” (Tr. 9-22-10, 163). Among the pallets at the loading dock, Officer Lukasavage found a .40 Smith and Wesson. (Tr. 9-22-10, 166-167).

During this period, RPD Officer Jason Otto (“Officer Otto”), a trained evidence technician, arrived at the loading dock behind Walmart. (Tr. 9-22-10, 174-176). Officer Otto seized the weapon located by Officer Lukasavage. (Tr. 9-22-10, 176). The .40 Smith and Wesson did not have

a magazine in it but the weapon did contain “a Smith and Wesson 40 caliber hollow point in the chamber of the gun.” (Tr. 9-22-10, 177). As a result, the weapon was ready to fire. (Tr. 9-22-10, 177). Officer Otto seized the magazine found by Officer Berger. (Tr. 9-22-10, 186-187). Subsequently, RPD detectives ascertained that the .40 Smith and Wesson and the magazine were stolen from Omari Howard’s vehicle outside a Detroit club during the early morning hours of Monday, August 10, 2009. (Tr. 9-23-10, 70-76).

Officer Otto placed Masalmani’s size 9 AJF Jordan tennis shoes into evidence. (Tr. 9-22-10, 180). He later learned that these tennis shoes were purchased from Jimmy Jazz for \$124.99 on August 9, 2009. (Tr. 9-22-10, 180-181). He seized the black wig from the CVS parking lot that Officer Berger observed Masalmani discard during their foot chase. (Tr. 9-22-10, 182-183). Officer Otto placed the back pack and the Rocowear gray zip-up hoodie into evidence. (Tr. 9-22-10, 184). He later determined that the hoodie was bought at Jimmy Jazz on August 9, 2009. (Tr. 9-22-10, 184-185). Officer Otto seized \$117.00 in cash discovered by Officer Kleinleder in Masalmani’s pocket. (Tr. 9-22-10, 185-186).

RPD Detective Keith Waller (“Detective Waller”) served as the officer-in-charge of the Roseville Town Center investigation. (Tr. 9-23-10, 61). Detective Waller arrived at the crime scene just as RPD officers took Masalmani into custody. (Tr. 9-23-10, 62-63). He supervised the

processing of the crime scene. (Tr. 9-23-10, 63-68). Waller obtained a security video from the Walmart surveillance cameras that depicted portions of the assault in the parking lot. (Tr. 9-22-10, 73-79; Tr. 9-23-10, 79-90). He secured the security video from the CVS surveillance cameras that showed Masalmani's purchase. (Tr. 9-22-10, 87; Tr. 9-23-10, 79-80).

Late that evening, Toisir Amed ("Amed"), an employee of a private security company hired by Walmart, was patrolling the parking lot and other area around the store. (Tr. 9-24-10, 7-8). The RPD had recently left the area. (Tr. 9-24-10, 8). Driving by the loading docks near where Masalmani had been arrested hours earlier, Amed discovered a cellular telephone. (Tr. 9-24-10, 9). Amed took the cellular telephone and gave it to the assistant store manager, Richard Hopkins ("Hopkins"). (Tr. 9-24-10, 9-11, 15-17). Hopkins spoke with an officer from the RPD and informed the officer that Amed had found a cellular telephone. (Tr. 9-24-10, 17-18). Officer Otto soon appeared at Walmart and collected the cellular telephone. (Tr. 9-24-10, 18-19, 23-24, 35-37).

The cellular telephone was owned by "Ejab Gills," one of Masalmani's aliases. (Tr. 9-24-10, 25; Tr. 9-30-10, 24). Officer Otto had viewed the cellular telephone "on a step leading up that loading dock area" but mistakenly left it there as the RPD collected evidence that afternoon. (Tr. 9-24-10, 33-34). Officer Otto looked through the cellular telephone's incoming calls, outgoing calls, and text messages. (Tr. 9-24-

10, 38, 40-43). The cellular telephone contained in incoming message, dated August 11, 2009, at 2:13 a.m., reading: "B safe my guy Allah will guide you on your journey. I got mad love for you and I will always have your back. Stay up and fuck with your boy. BYRD DI\$TRICT." (Tr. 9-24-10, 40). That same day, at 5:52 p.m., the cellular telephone received an incoming text message: "B careful and fuck the wall." (Tr. 9-24-10, 42).

The cellular telephone contained an outgoing text message, dated August 11, 2009, at 2:20 a.m., stating: "Much love, my nigga, I don't know what to say, but much love. I got to take these chances. Somebody got to step up." (Tr. 9-24-10, 42-43).

IV. Investigation

RPD detectives contacted Sergeant Willis that day and "indicat[ed] that they had arrested an individual who they believe[d] was the same person that robbed the bank in Harrison Township." (Tr. 9-21-10, 225-226; Tr. 9-28-10, 169-170). Sergeants Kennedy and Willis drove to the Roseville police station and "were debriefed" by the RPD detectives. (Tr. 9-21-10, 228). The RPD evidence technicians gave the MCSO sergeants two \$10 bills recovered from Masalmani upon his arrest. (Tr. 9-21-10, 228). These two bills "matched two of the bills listed as bait bills" from Flagstar Bank. (Tr. 9-21-10, 228-229). At the jury trial, Sarti identified two of the bills later recovered from Masalmani as Flagstar Bank's bait money. (Tr. 9-21-10, 207-210). The clothes seized from Masalmani appeared to Sergeant Kennedy to match the clothes the assailant wore

inside Flagstar Bank as shown in the security video. (Tr. 9-21-10, 229-230).

At the Roseville police station, Sergeants Kennedy and Willis mentioned to Detective Waller that Masalmani had employed a green Honda "as an escape vehicle." (Tr. 9-23-10, 98-99). One of the detectives mentioned that a "green Honda may have been involved" in the carjacking and kidnapping at the Quizno's in Eastpointe on Sunday, August 9, 2009. (Tr. 9-23-10, 98-99). That afternoon, the detectives learned that the green Honda had been recovered in the area of Seven Mile Road and Gratiot Avenue in Detroit and that Landry's ATM card had been used at a Sunoco gas station in the area of Seven Mile and Hayes.¹ (Tr. 9-23-10, 100-103).

By the evening of Tuesday, August 11, 2009, Detective Blackwell had contacted Doreen and informed her that he had seen the surveillance videos from the Detroit gas station's security cameras and that the individual making the withdrawals was not her son. (Tr. 9-24-10, 85; Tr. 9-28-10, 102-106, 110-11). Detective Blackwell suggested that Doreen "further the missing person complaint" with the RPD because Landry was last seen in Roseville at Bommarito's house. (Tr. 9-28-10, 110-111). That evening, a friend of Landry's father, Christopher

¹ Indeed, that day, DPD Officer Dean Bazcinski found the green Honda crashed on the east side of Detroit. (Tr. 9-28-10, 112-113). The DPD contacted Detective Blackwell, who arranged for it to be transported to the Chesterfield Township police station. (Tr. 9-28-10, 113-118).

Manning ("Manning"), travelled to the Detroit gas station to view the surveillance video. (Tr. 9-24-10, 84-85; Tr. 9-29-10, 161-162). He confirmed that it was not Landry on the video making these withdrawals. (Tr. 9-24-10, 86; Tr. 9-29-10, 162). The male individual making these ATM withdrawals was the individual that they saw on the local news robbing the Flagstar Bank on Monday, August 10. (Tr. 9-24-10, 86).

Hearing this, Doreen contacted the RPD to convey this information. (Tr. 9-24-10, 87). Doreen, along with friends and family, drove to the Roseville police station and spoke with Detective Waller and RPD Lieutenant Raymond Blarek ("Lieutenant Blarek"). (Tr. 9-24-10, 88-89; Tr. 9-28-10, 170-171). Lieutenant Blarek and Detective Waller drove to Detroit late that evening to begin searching for Landry. (Tr. 9-28-10, 221, 226-232). They looked in the area of Rossini and Redmond where Landry's green Honda had been recovered. (Tr. 9-29-10, 6-7).

The following morning, Wednesday, August 12, 2009, the EPD, the CTPD, the MCSO, and the RPD created a multi-jurisdictional task force to search for Landry and investigate these crimes. (Tr. 9-21-10, 229-231; Tr. 9-23-10, 99-103; Tr. 9-28-10, 111, 220-221; Tr. 9-29-10, 9). EPD Detective Patrick Connor ("Detective Connor") was the officer-in-charge of the Quizno's investigation. (Tr. 9-30-10, 5-8). The DPD assisted in the search for Matthew. (Tr. 9-23-10, 103). Lieutenant Blarek, along with other RPD officers, continued to search the area surrounding Rossini

and Redmond. (Tr. 9-29-10, 10-11). This area is “a heavy drug neighborhood.” (Tr. 9-29-10, 11).

On Wednesday, August 12, 2009, RPD Detective Bradley McKenzie (“Detective McKenzie”) walked Masalmani from a holding cell over to the 39th District Court where he was arraigned on charges regarding his assault upon Hassroune. (Tr. 9-22-10, 195-198). Later that day, Detective McKenzie spoke by telephone with Edwards from Jimmy Jazz who informed him that Masalmani was at the store with two other black males “spending a lot of money.” (Tr. 9-22-10, 198). Detective McKenzie drove to Jimmy Jazz and interviewed “a couple different employees.” (Tr. 9-22-10, 198-199). Upon his arrest, Masalmani was wearing the Rocowear “DOA” shirt he purchased at Jimmy Jazz. (Tr. 9-23-10, 15-16).

While Detective McKenzie was at Jimmy Jazz, Lieutenant Blarek telephoned him and stated that Masalmani “wanted to speak with [him].” (Tr. 9-22-10, 199). Inside an interview room at the Roseville police station at around 4:00 p.m., Masalmani waived his *Miranda* rights and spoke with Detective McKenzie. (Tr. 9-22-10, 199-203; Tr. 9-23-10, 5-6). In acknowledging these rights, Masalmani “signed EG.” (Tr. 9-22-10, 204-205). The interview was videotaped. (Tr. 9-22-10, 201-204). The defendant admitted only to verbally demanding that Hassroune give him the car. (Tr. 9-23-10, (Tr. 9-22-10, 199-203; Tr. 9-23-10, 5-6). Detective McKenzie asked Masalmani about his tattoos, and he responded that they “were a reference to the movie Scarface.” (Tr. 9-23-10, 17).

That same day, Sawyer positively identified Taylor from a photo lineup prepared by EPD detectives. (Tr. 9-23-10, 128). McKinney positively identified Masalmani from a photo lineup prepared by EPD detectives. (Tr. 9-23-10, 179-180, 184). Wata positively identified Masalmani from a photo lineup prepared by EPD detectives. (Tr. 9-28-10, 15-24). EPD officers obtained a security video from both the Quizno's surveillance camera inside the restaurant and the Sunoco gas station inside the convenience store. (Tr. 9-23-10, 135-144, 194-204; Tr. 9-24-10, 108-119). In collecting the security video from the Sunoco gas station, Rahime told the EPD detectives that the individual shown in the video (Masalmani) was the same individual who had robbed the Flagstar Bank a few days earlier. (Tr. 9-24-10, 111-112). Further, Rahime, with help from Manning, recovered the discarded shirt from a dumpster at police request. (Tr. 9-24-10, 106, 110; Tr. 9-29-10, 163-165).

Also on Wednesday, August 12, 2009, Doreen's daughter received a Facebook message regarding "a young man in a four door green car was carjacked and kidnapped" outside Quizno's in Eastpointe. (Tr. 9-24-10, 89-90). Doreen knew that the "last thing that posted on Matt's account was Quizno's" at 2:33 p.m. (Tr. 9-24-10, 90; Tr. 9-30-10, 25). Doreen, along with family and friends, drove to the Eastpointe police station and gave them a copy of the message. (Tr. 9-24-10, 90).

On Thursday, August 13, 2009, at 10:00 a.m., Lieutenant Blarek, accompanied by Lieutenant James Knobelsdorf, located Landry's

deceased body inside a burned out house at 14711 Maddelein in Detroit. (Tr. 9-23-10, 104-105; Tr. 9-29-10, 13-25, 108-109). Thousands of maggots had “consumed the frontal part of” Landry’s face. (Tr. 9-29-10, 24). Lieutenant Blarek secured the scene and contacted the EPD. (Tr. 9-29-10, 22-27). To Lieutenant Blarek, it appeared that Landry had been “kneeling” when he was shot in the back of his head. (Tr. 9-29-10, 26).

Kimberly Zebrowski (“Zebrowski”), a forensic scientist with the Crime Scene Team for the Michigan State Police (“MSP”), responded along with several other MSP forensic scientists to 14711 Maddelein in Detroit. (Tr. 9-29-10, 52). After being briefed by Detective Connor, the forensic scientists found a fired cartridge casing about a foot away from Landry’s body and another fired cartridge casing on a driveway a few houses away. (Tr. 9-29-10, 61, 67-69; Tr. 9-30-10, 12). They collected “part of [Landry’s] eyeglasses.” (Tr. 9-29-10, 74).

Later that day, at the RPD’s request, Detective Blackwell travelled to Detroit to secure a security video from the surveillance camera at the convenience store of a Marathon gas station in the area of Seven Mile Road and Gratiot Avenue. (Tr. 9-28-10, 118-121). Detective Blackwell viewed the video at the gas station. (Tr. 9-28-10, 122). The video depicted Masalmani, at 5:15 p.m. on August 9, 2009, in the parking lot by the gas pumps in Landry’s green Honda. (Tr. 9-28-10, 122). Two African-American females were inside the car. (Tr. 9-28-10, 122). At the

very beginning of the video, Taylor, now wearing the orange baseball hat, is visible handing something to Masalmani. (Tr. 9-30-10, 26-30).

Dr. Lokman Sung ("Dr. Sung"), an assistant medical examiner in Wayne County, performed an autopsy on Landry. (Tr. 9-24-10, 127). The body had sustained "significant decomposition." (Tr. 9-24-10, 127-129). The cause of Landry's death was "a gunshot wound to the head." (Tr. 9-24-10, 132). Landry was shot in the back of the head and the bullet exited out the front of his head. (Tr. 9-24-10, 134-137). The bullet's trajectory was "slightly downward." (Tr. 9-24-10, 138). Dr. Sung characterized the manner of Landry's death as homicide. (Tr. 9-24-10, 140-141).

MCSO Deputy Ronald Murphy ("Deputy Murphy"), an evidence technician, processed Masalmani and Taylor's bicycles and Landry's green Honda for evidence after it was recovered. (Tr. 9-24-10, 162, 165). The vehicle had "damage to the passenger side right fender." (Tr. 9-24-10, 176). Deputy Murphy "dusted the entire vehicle" for fingerprints. (Tr. 9-24-10, 177-179). Inside the vehicle, he seized "money bands that the bank uses to put around money or cash." (Tr. 9-24-10, 180). Deputy Murphy collected a pair of sunglasses, a "piece of paper" that "appeared to be a map," and note stating: "\$50,000 in a bag, or I kill everybody." (Tr. 9-24-10, 182-186). Among the debris in the vehicle, Deputy Murphy seized a Smith and Wesson label, an orange baseball hat, and numerous

cigarette butts. (Tr. 9-24-10, 188-191). He found a gas can in the trunk. (Tr. 9-24-10, 191).

Lieutenant Karen Dutcher ("Lieutenant Dutcher"), a supervisor with the MSP's latent print unit, analyzed the latent prints lifted from the note and the map seized from Landry's green Honda. (Tr. 9-28-10, 201-205). Dutcher found that the latent prints on each item belonged to Masalmani. (Tr. 9-28-10, 201-205). Sergeant Steven Nowicki ("Sergeant Nowicki"), a trooper with the MSP's latent print unit, analyzed the latent prints lifted from a white cardboard box seized from Landry's green Honda. (Tr. 9-29-10, 42). Nowicki found that the latent prints on the box belonged to Masalmani. (Tr. 9-29-10, 42).

Lynne Helton ("Helton"), a forensic scientist with the MSP's DNA unit, received known DNA samples from Landry, Masalmani, and Taylor, as well as evidence from the police investigation. (Tr. 9-24-10, 197, 206-215). Helton analyzed a "Schwinn black grip" and excluded Landry and Taylor as the donors of the DNA on this item. (Tr. 9-24-10, 219). She analyzed a "Magnum bike grip" and excluded Landry and Masalmani as the donors of the DNA on this item. (Tr. 9-24-10, 219). The DNA profile found on this item matched Taylor's DNA profile. (Tr. 9-24-10, 220).

Further, Helton analyzed the white t-shirt retrieved from the dumpster at the Sunoco gas station. (Tr. 9-24-10, 220-221). She excluded Landry and Taylor as the donors of the DNA on this item. (Tr. 9-24-10, 220-221). Helton analyzed the orange baseball hat found in the

green Honda. (Tr. 9-24-10, 221). The DNA profile found on this item matched Taylor's DNA profile. (Tr. 9-24-10, 221). Helton analyzed a Marlboro cigarette butt found the green Honda's passenger floor. (Tr. 9-24-10, 222). She determined that Landry's DNA profile matched the DNA profile on this cigarette butt. (Tr. 9-24-10, 223). Finally, Helton analyzed a cigarette butt found in the trunk of the green Honda. (Tr. 9-24-10, 223). The major DNA profile found on this butt matched Landry's DNA profile and the minor DNA profile matched Masalmani's DNA profile. (Tr. 9-24-10, 223-224). According to Helton, this result could have been caused by Landry and Masalmani sharing a cigarette. (Tr. 9-24-10, 226).

Manning assisted the family in their search for Landry and evidence related to his disappearance from August 11-13, 2009. (Tr. 9-29-10, 153-170). Months after Landry's death, Manning, along with some friends, returned to 14711 Maddelein looking "to find the bullet" that killed Landry. (Tr. 9-29-10, 171). Manning found a bullet lodged in a wall. (Tr. 9-29-10, 174-178). Manning contacted the EPD and Detective Connor came out to the house to retrieve the bullet. (Tr. 9-29-10, 178-179; Tr. 9-30-10, 16-20).

Lieutenant David Vroman ("Lieutenant Vroman"), a supervisor with the MSP's Firearms Tool Mark Unit, analyzed the firearm recovered from Walmart's loading dock, the two fired cartridge casing recovered by the MSP, and the fired bullet found by Manning. (Tr. 9-29-10, 119-120).

Lieutenant Vroman concluded that the cartridge casings were not fired from the firearm. (Tr. 9-29-10, 132-133). He determined that the fired bullet did not come from the firearm. (Tr. 9-29-10, 137).

After a trial before Macomb County Circuit Court Judge Diane M. Druzinski ("Judge Druzinski") in September of 2010, a jury convicted Masalmani of Bank Robbery (Reeber) (MCL § 750.531), Armed Robbery (MCL § 750.529) (Maynard), Kidnapping (MCL § 750.349) (Maynard), Armed Robbery (Stepanenko), three counts of Felony Firearm (MCL § 750.227b), Carjacking (Hassroune) (MCL § 750.529a), Receiving and Concealing a Stolen Firearm (MCL § 750.535b), Felony Firearm, First-Degree Felony Murder (Landry) (MCL § 750.316), Carjacking (Landry), Conspiracy to Commit Carjacking (MCL § 750.157a), Kidnapping (Landry), Conspiracy to Commit Kidnapping, Larceny from the Person (Landry) (MCL § 750.357), and Felony Firearm. (Tr. 10-1-10, 10-12).

On November 4, 2010, Judge Druzinski sentenced Masalmani to a term of life imprisonment without the possibility of parole on his First-Degree Felony Murder conviction, terms of 15 years to 50 years imprisonment on his Bank Robbery, Armed Robbery, Kidnapping convictions in the Flagstar Bank case and his Carjacking conviction in the Walmart/Marshall's case, terms of 25 years to 50 years imprisonment on his Carjacking, Kidnapping, and Conspiracy convictions in the Quizno's case, terms of five years to 10 years imprisonment on his Receiving and Concealing a Stolen Firearm and

Larceny from a Person convictions, and two years imprisonment on the five Felony Firearm convictions. (Tr. 11-4-10, 19-21).

Masalmani appealed as of right. The Michigan Court of Appeals (“Court of Appeals”) affirmed his convictions, but vacated Judge Druzinski’s sentence on Masalmani’s conviction for First-Degree Felony Murder and remanded for resentencing consistent with *Miller v. Alabama*, 132 SCt 2455; 183 LEd2d 407 (2012) and *People v. Carp*, Mich App 298 Mich App 472; 828 NW2d 685 (2012) (affirmed at 496 Mich 440; 852 NW2d 801 (2014)). See Opinion (3/19/13)- COA Nos. 301376, 301377, 301388. On September 3, 2012, the Michigan Supreme Court (“Supreme Court”) denied Masalmani’s application for leave to appeal. See Order- SC Nos. 147102, 147102, 147103.

In early 2014, the Michigan Legislature passed MCL § 769.25, which took effect on March 4, 2014. In April of 2014, the prosecution filed a motion pursuant to requesting imposition of a sentence of life imprisonment without the possibility of parole on the defendant’s First-Degree Felony Murder conviction. Judge Druzinski conducted a three-day hearing in late October of 2014. On January 6, 2015, Judge Druzinski sentenced Masalmani to life imprisonment without the possibility of parole. See Opinion and Order- Macomb CC No. 09-5243-FC.

Masalmani appealed as of right. The Court of Appeals affirmed Judge Druzinski’s sentence in a per curiam opinion. See Opinion

(9/22/16)- COA No. 325662. He now seeks leave to appeal with the Supreme Court.

ISSUE

THE TRIAL COURT PROPERLY WEIGHED THE FACTORS ENUNCIATED IN *MILLER V. ALABAMA* AND MCL § 769.25 IN DETERMINING THAT THE DEFENDANT IS THE RARE JUVENILE OFFENDER WHOSE CRIME REFLECTS IRREPARABLE CORRUPTION AND, THUS, DID NOT ERR IN SENTENCING THE DEFENDANT TO A TERM OF LIFE IMPRISONMENT WITHOUT PAROLE FOR HIS CONVICTION FOR FIRST-DEGREE FELONY MURDER.

STANDARD OF REVIEW

An appellate court reviews findings of fact by a trial court for clear error. *People v. Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008). An appellate court reviews issues of statutory interpretation de novo. *People v. Idziak*, 484 Mich 549, 553; 773 NW2d 616 (2009). Questions of constitutional law are reviewed de novo. *People v. LeBlanc*, 465 Mich 575, 579; 640 NW2d 246, 249 (2002).

ARGUMENT

This Court remanded this case back to the trial court for resentencing in the wake of the United States Supreme Court's decision in *Miller v. Alabama*, 132 SCt 2455; 183 LEd2d 407 (2012) and this Court's decision in *People v. Carp*, Mich App 298 Mich App 472; 828 NW2d 685 (2012) (affirmed at 496 Mich 440; 852 NW2d 801 (2014)). See Opinion (3/19/13)- COA Nos. 301376, 301377, 301388.

In *Miller*, supra at 2467-2475, the United States Supreme Court held that mandatory life sentences without the possibility of parole for individuals under the age of 18 were “cruel and unusual” and violated the Eighth Amendment to the United States Constitution. The *Miller* Court observed:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it. *Id.* at 2468.

The Court in *Miller*, however, rejected arguments for a categorical bar to sentencing juveniles to life in prison without parole, observing that it did not “foreclose a sentencer’s ability to make that judgment in homicide cases.” *Id.* at 2469. Instead, the opinion emphasized that its holding served to “mandate[] only that a sentence follow a certain process—

considering an offender's youth and attendant characteristics—before imposing a particular penalty.” *Id.* at 2471.

The Court of Appeals subsequently addressed *Miller* as it applied to Michigan's sentencing scheme in *People v. Carp*, 298 Mich App 472; 828 NW2d 685 (2012). In *Carp*, *supra* at 531, this Court held that MCL § 791.234(6)(a), which provides that a prisoner sentenced to life imprisonment for First-Degree Murder “is not eligible for parole,” was unconstitutional “as written and as applied to juvenile offenders convicted of homicide.” According to the *Carp* Court, the statute “fail[ed] to acknowledge a sentencing court's discretion to determine that a convicted juvenile homicide offender may be eligible for parole. *Id.* Ultimately, the Court of Appeals in *Carp* directed that a trial court, in sentencing a juvenile convicted of First-Degree Murder, must “evaluate and review those characteristics of youth and the circumstances of the offense as delineated in *Miller* and this opinion in determining whether following the imposition of a life sentence the juvenile is to be deemed eligible or not eligible for parole.” *Id.* at 538.

After the Court of Appeals' decision in *Carp*, the Michigan Legislature passed MCL § 769.25, which took effect on March 4, 2014. The statute, in part, applies to criminal defendants who were less than 18 years of age at the time he or she committed an offense punishable by life imprisonment without the possibility of parole before the act's effective date and “[o]n June 25, 2012 the case was pending in the trial

court or the applicable time periods for direct appellate review by state or federal courts have not expired.” MCL § 769.25(1)(b)(ii). Moreover, the statute provides that “[i]f the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described under subsection (1)(b), the prosecuting attorney shall file the motion within 90 days after the effective date of the amendatory act that added this section.” Further, the statute indicates that if the assistant prosecuting attorney files such a motion: “the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in *Miller v. Alabama*, 576 US __; 183 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual’s record while incarcerated.” MCL § 769.25(6). Finally, the statute states that at the sentencing hearing, “the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court’s reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.” MCL § 769.25(7).

Finally, this Court weighed in on this issue in *People v. Carp*, 496 Mich 440; 852 NW2d 801 (2014), affirming the Court of Appeals’ decision. In addition, however, this Court, echoing language in *Miller* itself, emphasized that neither the Eighth Amendment to the United States Constitution nor the Michigan Constitution categorically bars a

life-without-parole sentence for juvenile homicide offenders, even if that juvenile was convicted on an aiding and abetting theory. *Id.* at 528.

Against this backdrop, Judge Druzinski held a three-day hearing in October of 2014. In early January of 2015, Judge Druzinski ruled:

The Court has carefully considered the various factors set forth in the [the] Supreme Court's decision in *Miller*. The Court has reviewed testimony presented at the resentencing hearing, and the exhibits presented. Having done so, the Court is satisfied that defendant's case presents precisely what the Supreme Court characterized as the "rare juvenile offender whose crime reflects irreparable corruption." *Roper v. Simmons*, 543 US 551, 573; 125 SCt 1183; 161 LEd2d 1 (2004). Based on the foregoing, the Court finds that defendant is properly sentenced to life in prison without the possibility of parole. See Opinion (1/16/15), 7- Macomb CC No. 09-5243-FC.

Given the appellate record, Judge Druzinski did not err in resentencing the defendant to term of life imprisonment without the possibility of parole on his conviction for First-Degree Felony Murder.

A. Chronological Age and Hallmark Features

In its seminal decision in *Miller*, *supra* at 2468, the United States Supreme Court decided that state criminal sentencing schemes that mandate sentences of life imprisonment without the possibility of parole amount to unconstitutional cruel and unusual punishment, noting, in part, that such statutes "preclude[] consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate the risks and consequences." The *Miller* Court

provided a bright-line in considering the defendant's chronological age and his juvenile psychological disposition—18 years old. Although the defense presented expert testimony at the resentencing hearing suggesting that prefrontal cortex development continues for individuals into their 20s, trial courts applying the *Miller* factors are confined by the 18-year age limit. For that reason, this expert testimony is of limited utility at a *Miller* hearing, where every defendant's limbic system will be overly active and every defendant's prefrontal cortex will be developing.

Here, the defendant was 17 years and eight months when he ruthlessly executed Matthew Landry in a secluded Detroit drug den several hours after abducting him after he had methodically used his victim to obtain cash and a vehicle. By contrast, as Judge Druzinski observed, *Miller* itself “dealt with juvenile defendants who were a mere 14-years old at the time of their offenses, a far cry from this case.” (Tr. 1-6-15, 7). The defense introduced no testimony or evidence at the resentencing hearing demonstrating that the defendant was unusually immature or impetuous for a nearly-18 year old. Instead, the defendant's guardian ad litem testified at the resentencing hearing that, maturity-wise, the defendant “was probably in the middle out of the 5,000 to 8,000 children he had represented over the years.” (Tr. 1-16-15, 7). Judge Druzinski found that the defendant “did exhibit some level of maturity.” (Tr. 1-16-15, 8). More significantly, as noted above and in detail in the COUNTERSTATEMENT OF FACTS, “there was no

impulsiveness or failure to appreciate risks when he kidnapped and kept Mr. Landry alive for at least eight hours before killing him.” (Tr. 1-16-15, 8). Working within *Miller*’s framework, Judge Druzinski did not err in concluding that “this factor favors imposing sentence of life without the possibility of parole.” (Tr. 1-6-15, 8).

B. Family and Home Environment

Also in *Miller*, *supra* at 2468, the United States Supreme Court observed that such mandatory sentencing schemes for juveniles “prevent[] taking into account the family and home environment that surrounds him—and from he cannot usually extricate himself—no matter how brutal or dysfunctional.” Here, Judge Druzinski noted that the evidence at the resentencing hearing was “essentially uncontroverted” that the defendant’s “family and home environment were terrible.” (Tr. 1-6-15, 8). Given the testimony and evidence adduced at this hearing, she did not err in concluding that “this factor likely weighs in defendant’s favor against a life sentence without the possibility of parole.” (Tr. 1-6-15, 9).

C. Circumstances of the Homicide Offense

The *Miller* court, in holding that mandatorily sentencing a juvenile to life imprisonment without the possibility of parole violated the Eight Amendment, observed that such a scheme “neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and way familial and peer pressures may have affected him.” *Id.*

at 2468. As set forth in more detail in the COUNTERSTATEMENT OF FACTS, the defendant, along with his co-defendant, brazenly kidnapped and carjacked Matthew Landry in broad daylight in Eastpointe and, several hours later, brutally executed him inside a burnt-out drug in Detroit. The defendant committed two more violent crimes over the next few days, using Matthew Landry's green Honda as a getaway vehicle. (Tr. 1-6-15, 10). Further, nothing in the testimony or evidence from the resentencing hearing suggested that the defendant's crime spree was the result of familial or peer pressure. (Tr. 1-6-15, 10).

Judge Druzinski observed that the defendant "had numerous opportunities to abandon his plan, and instead d[r]ove with his co-defendant and Matthew Landry around town for hours before killing Landry in cold blood execution style in a vacant home." (Tr. 1-6-15, 10-11). Given these circumstances, she did not err in deciding that "this factor weighs heavily in favor of finding that a sentence of life without the possibility of parole is appropriate." (Tr. 1-6-15, 10). As Judge Druzinski aptly noted, "[t]here is nothing in the facts and circumstances of the crime which would warrant anything less than life in prison without the possibility of parole." (Tr. 1-6-15, 11).

D. Incapacities of Youth

In *Miller, supra* at 2468, the United States Supreme Court, in striking down sentencing schemes that mandate life in prison without the possibility of parole for juvenile offenders, observed that such

systems “ignore[] that [the defendant] might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.” Here, at the resentencing hearing, the defense did not even contest that the defendant may have been charged with a lesser crime if not for his age. As Judge Druzinski concluded, “[t]here is no evidence that at the incapacities of youth caused defendant to be unable to participate in his defense . . . [n]or is there any evidence that he implicated himself due to youthful incapacities.” (Tr. 1-6-15, 11). As a result, she did not err in determining that this Miller factor “favors sentencing the defendant to life without the possibility of parole.” (Tr. 1-6-15, 11).

E. Possibility of Rehabilitation

Finally, *Miller, supra* at 2468, in ruling that a juvenile offender may not be automatically sentenced to life without the possibility of parole without offending the Eighth Amendment, stated that “this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.” Here, first of all, the utter depravity of the defendant’s vicious crime spree, outlined in more detail in the COUNTERSTATEMENT OF FACTS, suggests that the defendant is wholly incapable of rehabilitation. Notably, Dr. Lyle Danuloff (“Dr. Danuloff”), the licensed psychologist who evaluated the defendant for the defense

just prior to the resentencing hearing and approximately five years after he murdered Matthew Landry, testified that the defendant told him that his crimes were “both” righteous and evil. (Tr. 10-24-14, 54). Further, the defendant told Dr. Danuloff that “he didn’t have any choice” but to commit these crimes. (Tr. 10-24-14, 54).

Moreover, the relevant statute, MCL § 769.25(6), provides that, at a resentencing hearing, the trial court must consider the *Miller* factors, as well as “any other criteria relevant to its decision, including the individual’s record while incarcerated.” Here, the defendant amassed “23 major misconduct violations” after his incarceration with the Michigan Department of Corrections. (Tr. 10-24-14, 74).

Significantly, the defense at the resentencing hearing was entirely unable to introduce any testimony or evidence tending to show that the defendant had any real prospects for rehabilitation. Dr. Daniel Keating (“Dr. Keating”), the pediatric psychologist who testified for the defense at the resentencing hearing, declined to make any prediction for the defendant regarding his rehabilitation. (Tr. 10-21-14, 43-47, 55-57). Even so, as Judge Druzinski noted in her ruling, Dr. Keating “acknowledged that the rehabilitation challenges are certainly higher in the case of a juvenile who is capable of pulling a trigger” and that “the worse the circumstances, the more likely it is for nonresilience, no rehabilitation to be the case.” (Tr. 1-6-15, 11).

Dr. Danuloff, like Dr. Keating, testified that he could not predict the defendant's future outcome. (Tr. 10-24-14, 55-56). Dr. Danuloff conceded that the diagnosis is "not rosy" for individuals who suffer from antisocial personality disorder who willingly seek psychotherapy. (Tr. 10-24-14, 66). The defendant, who suffers from antisocial personality disorder, is in lockdown 23 hours a day and will have no opportunity for any treatment whatsoever. (Tr. 10-24-14, 66-68). Dr. Danuloff testified that the defendant, when he committed these crimes, was "unsocialized, unattached . . . in any kind of substantial way, . . . lived on the streets, . . . and lived not so much . . . an immoral life, but lived an amoral life." (Tr. 10-24-14, 46). The defendant "didn't live with a sense of mortality, he lived with the sense of what do I need and what do I need to do to get my needs met." (Tr. 10-24-14, 46). Despite all this, as well as the defendant's statement to Dr. Danuloff regarding "righteousness" and "evil," Dr. Danuloff testified that the defendant was "lucky" because, as a result of the United States Supreme Court's decision in *Miller*, "something was happening inside of" the defendant that Dr. Danuloff was unable to define that was "very primitive" and "embryonic." (Tr. 10-24-14, 50). At the same, Dr. Danuloff conceded that the defendant, given his diagnosis of antisocial personality disorder, was manipulative. (Tr. 10-24-14, 66). Surely such testimony does not constitute evidence that the defendant has any real prospects for rehabilitation.

Given the foregoing, Judge Druzinski did not err in concluding that “this factor favors a sentence of life without the possibility of parole.” (Tr. 1-6-15, 12-13). Judge Druzinski stated:

. . . The very difficulty of defendant’s upbringing, the only factor which could be said to weigh in favor of an indeterminate sentence, also suggests that defendant’s prospects for rehabilitation are minimal. None of the experts presented by the defendant were ready to testify that defendant has undergone anything more than the first embryonic stirrings of moral sensibility. The Court finds it rather telling that defendant only began to avoid misconducts once the possibility of parole became a reality with the Supreme Court’s decision in *Miller*. Moreover, the Court finds it incredibly troubling that defendant continues to believe that his cold-blooded murder of Matthew Landry was partially righteous. Finally, the Court notes that even if defendant is experiencing the embryonic development of a rudimentary moral sensibility, it is implausible that he will experience full rehabilitation without intensive professional assistance, assistance which he is very unlikely to receive in prison. (Tr. 1-6-15, 13).

Under the circumstances, the appellate record fully supports Judge Druzinski’s determination that the “defendant’s prospects for rehabilitation are negligible.” (Tr. 1-6-15, 13).

In the end, Judge Druzinski, who studiously considered the factors set forth in *Miller*, did not err in finding that the “defendant’s case presents precisely what the [United States] Supreme Court characterized as the ‘rare juvenile offender whose crime reflects irreparable corruption.’” (Tr. 1-6-15, 13-14). Judge Druzinski’s sentence of life

imprisonment without the possibility of parole on the defendant's conviction for First-Degree Felony Murder should not be disturbed.

ISSUE II

THE TRIAL COURT DID NOT COMMIT PLAIN ERROR IN SENTENCING THE DEFENDANT TO A TERM OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE ON HIS FIRST-DEGREE FELONY MURDER CONVICTION WITHOUT EMPANELING A JURY.

STANDARD OF REVIEW

An appellate court reviews questions of constitutional law de novo. *People v. Vaughn*, 491 Mich 642, 650; 821 NW2d 288 (2012). Here, however, the defendant did not assert his Sixth Amendment right to a jury trial at the resentencing hearing in October of 2014. As a result, the defendant's unpreserved claim of constitutional error is reviewable for plain error affecting his substantial rights. *People v. Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

ARGUMENT

As indicated, the trial court, in October of 2014, conducted a resentencing hearing pursuant to *Miller* and MCL § 769.25, ultimately, in January of 2015, sentencing the defendant to a term of life imprisonment without the possibility of parole. During these proceedings, the defendant never asked that the trial court empanel a jury to make this determination. Regardless, however, the Court of Appeals recently held in a conflict resolution panel in *People v. Hyatt*, ___ Mich App ___; ___ NW2d ___ (2016), that *Miller's* individualized sentencing mandate, as incorporated by MCL § 769.25, did not offend the Sixth Amendment and

that a judge, not a jury, was to make the determination of whether to impose a life-without-parole sentence or a term-of-years sentence under MCL § 769.25 to a juvenile convicted of First-Degree Murder.

RELIEF REQUESTED

The Plaintiff-Appellee requests that this Honorable Court **DENY** the Defendant-Appellant's application for leave to appeal and **AFFIRM** the judgment of conviction.

Respectfully submitted,

Eric J. Smith P46186
Prosecuting Attorney
Macomb County, Michigan
By:

/s/ Joshua D. Abbott

Joshua D. Abbott P53528
Chief Appellate Attorney

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